

MAY 11 1970 - 1 00 PM

INTERSTATE COMMERCE COMMISSION

AGREEMENT AND ASSIGNMENT dated as of May 1, 1970, by and between General Motors Corporation, a corporation of the State of Delaware (Electro-Motive Division) (hereinafter called the "Builder"), and The Geo. D. Warthen Bank, a State chartered banking association (hereinafter called the "Assignee") with offices in Sandersville, Washington County, Georgia;

WHEREAS, the Builder and Sandersville Railroad Company a corporation (hereinafter called the "Railroad") have entered into a Conditional Sale Agreement dated as of May 1, 1970, (hereinafter called the Conditional Sale Agreement), covering the manufacture, sale and delivery by the Builder and the purchase by the Railroad of the diesel locomotive described or referred to in the Conditional Sale Agreement (hereinafter often referred to as the Equipment);

NOW, THEREFORE, this Agreement and Assignment (hereinafter called this Assignment) WITNESSETH: That, in consideration of the sum of One Dollar and other good and valuable consideration paid by the Assignee to the Builder, the receipt of which is hereby acknowledged, as well as of the mutual covenants herein contained:

Section 1. The Builder hereby assigns, transfers and sets over unto the Assignee, its successors and assigns (a) all the right, title and interest of the Builder in and to the Equipment when and as delivered and accepted and, as to such unit upon payment to the Builder of the amounts required to be paid under Section 6 hereof in respect of such unit, (b) all the right, title and interest of the Builder in and to the Conditional Sale Agreement in respect of the Equipment (except the right to manufacture and reimbursement for

taxes paid or incurred by the Builder as provided in Article 5 thereof), and in and to any and all amounts which may be or become due or owing by the Railroad to the Builder under the Conditional Sale Agreement on account of the Railroad's indebtedness in respect of the Purchase Price of the Equipment and interest thereon, and in and to any other sums becoming due from the Railroad under the Conditional Sale Agreement, other than those hereinabove excluded, and (c) all of the Builder's rights, powers, privileges and remedies under the Conditional Sale Agreement, (without any recourse, however, against the Builder for or on account of the failure of the Railroad to make any of the payments provided for in, or otherwise to comply with, any of the provisions of the Conditional Sale Agreement); provided, however, that this Assignment shall not subject the Assignee to, or transfer, or pass, or in any way affect or modify, the liability of the Builder to construct and deliver the Equipment in accordance with the Conditional Sale Agreement or in respect of its obligations contained in Articles 3 and 11 of the Conditional Sale Agreement, or relieve the Railroad from its obligations to the Builder under Articles 1, 5 and 11 (except that the Assignee shall also be entitled to the benefit of the Railroad's obligation under Article 11) of the Conditional Sale Agreement, it being understood and agreed that, notwithstanding this Assignment, or any subsequent assignment pursuant to the provisions of Article 13 of the Conditional Sale Agreement, all obligations of the Builder to the Railroad in respect of the Equipment shall be and remain enforceable by the Railroad, its successors and assigns, against and only against the Builder.

In furtherance of the foregoing assignment and transfer, the Builder hereby authorizes and empowers the Assignee, in the Assignee's own name or in the name of the Assignee's nominee, or in the name of and as attorney, hereby irrevocably constituted, for the Builder, to ask, demand, sue for, collect, receive and enforce any and all sums to which the Assignee is or may become entitled under this Assignment and compliance by the Railroad with the terms and agreements on its part to be performed under the Conditional Sale Agreement, but at the expense and liability and for the sole benefit of the Assignee.

Section 2. The Builder covenants and agrees that it will construct the Equipment in full accordance with the Conditional Sale Agreement and will deliver the same upon completion to the Railroad in accordance with the provisions of the Conditional Sale Agreement; and that, notwithstanding this Assignment, it will perform and fully comply with each and all of the covenants and conditions of the Conditional Sale Agreement set forth to be performed and complied with by the Builder. The Builder further covenants and agrees that it will warrant to the Assignee and the Railroad that at the time of delivery of the Equipment it had legal title to such Equipment and good and lawful right to sell such Equipment and title to such Equipment was free of all claims, liens and encumbrances of any nature except only the rights of the Railroad under the Conditional Sale Agreement; and the Builder further covenants and agrees that it will defend the title to such Equipment against the demands of all persons whomsoever based on claims originating prior to the delivery of such Equipment

by the Builder to the Railroad; all subject, however, to the provisions of the Conditional Sale Agreement and the rights of the Railroad thereunder.

Section 3. The Builder covenants and agrees with the Assignee that in any suit, proceeding or action brought by the Assignee under the Conditional Sale Agreement for any installment of, or interest on, indebtedness in respect of the purchase price or to enforce any provision of the Conditional Sale Agreement, the Builder will save, indemnify and keep harmless the Assignee from and against all expense, loss or damage suffered by reason of any defense, set-off, counterclaim or recoupment whatsoever of the Railroad arising out of a breach by the Builder of any obligation in respect of the Equipment or the manufacture, construction, delivery or warranty thereof, or under Articles 3 and 11 of the Conditional Sale Agreement, or by reason of any defense, set-off, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Railroad by the Builder. Any and all such obligations shall be and remain enforceable by the Railroad against and only against the Builder and shall not be enforceable against the Assignee or any party or parties in whom title to the Equipment or any of the rights of the Builder under the Conditional Sale Agreement shall vest by reason of this assignment or of successive assignments.

The Builder will indemnify, protect and hold harmless the Assignee from and against any and all liability, claims, demands,

costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Assignee or its assigns because of the use in or about the construction or operation of the Equipment or any unit thereof, of any design, article or material which infringes, or is claimed to infringe on any patent right, except for any design, article or material specified by the Railroad and not manufactured by the Builder.

The Builder agrees that any amount payable to it by the Railroad in respect of the Equipment, whether pursuant to the Conditional Sale Agreement or otherwise, not hereby assigned to the Assignee, shall not be secured by any lien or charge on the Equipment.

Section 4. The Builder covenants and agrees that, at the time of delivery of the Equipment to the Railroad, there will be plainly, distinctly, permanently and conspicuously placed and fastened on each side thereof a metal plate bearing the following legend, or such legend shall be otherwise plainly, distinctly, permanently and conspicuously marked on each side thereof, in either case in letters not less than one inch in height:

"THE GEO. D. WARTHEN BANK, OWNER"

Section 5. Upon request of the Assignee, its successors and assigns, the Builder will execute any and all instruments which may be necessary or proper in order to discharge of record the Conditional Sale Agreement or any other instrument evidencing any interest of the Builder therein or in the Equipment.

Section 6. The Assignee covenants and agrees that, as and

when the locomotive is delivered to and accepted by the Railroad, pursuant to the Conditional Sale Agreement, it will pay to the Builder the purchase price for such locomotive so delivered and accepted upon receipt by the Assignee of the following listed documents in form and substance satisfactory to it:

(a) A Bill of Sale from the Builder to the Assignee evidencing the transfer to the Assignee of title to the locomotive and warranting to the Assignee and to the Railroad that Builder had legal title to such locomotive and good and lawful right to sell such locomotive and that title to such locomotive was free of all claims, liens and encumbrances of any nature except only the rights of the Railroad under the Conditional Sale Agreement;

(b) A certificate or certificates signed by an officer or other authorized representative of the Railroad stating that the locomotive has been delivered to the Railroad in accordance with the Conditional Sale Agreement and has been inspected and accepted by him on behalf of the Railroad and further stating that the locomotive has been marked as required by Section 4 hereof;

(c) An invoice for the locomotive accompanied by or having endorsed thereon a certification by the Railroad as to the correctness of the price of such locomotive;

(d) An opinion of counsel for the Railroad stating that (i) the Railroad is a duly organized and existing corporation in good standing under the laws of the State of Georgia and has the power

and authority to own its properties and to carry on its business as now conducted, (ii) the Conditional Sale Agreement has been duly authorized, executed and delivered by the Railroad and is a valid instrument binding upon the Railroad and enforceable against the Railroad in accordance with its terms, (iii) the Conditional Sale Agreement and this Assignment have been duly filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act and that no other filing or recordation is necessary for the protection of the rights of the Assignee in any State of the United States of America, (iv) no approval of the Interstate Commerce Commission or any other governmental authority is necessary for the execution and delivery of the Conditional Sale Agreement, and (v) title to the locomotive is validly vested in the Assignee, free of all claims, liens and encumbrances except only the rights of the Railroad under the Conditional Sale Agreement;

(e) An opinion of counsel for the Builder stating that (i) the Builder is a duly organized and existing corporation in good standing under the laws of its State of Incorporation and has the power and authority to own its properties and to carry on its business as now conducted, (ii) the Conditional Sale Agreement has been duly authorized, executed and delivered by the Builder and is a valid instrument binding upon the Builder and enforceable against the Builder in accordance with its terms, (iii) this Assignment has been duly authorized, executed and delivered by the Builder and is a valid instrument binding upon the Builder and enforceable

against the Builder in accordance with its terms, (iv) the Assignee is vested with all the right, title and interest of the Builder in and to the Conditional Sale Agreement purported to be assigned to the Assignee by this Assignment, and (v) title to the locomotive is validly vested in the Assignee, and that such locomotive, at the time of delivery thereof to the Railroad, was free of all claims, liens and encumbrances except only the rights of the Railroad under the Conditional Sale Agreement.

Section 7. The Assignee may assign all or any of its rights under the Conditional Sale Agreement, including the right to receive any payments due or to become due to it from the Railroad thereunder. In the event of any such assignment any such subsequent or successive assignee or assignees shall, to the extent of such assignment, enjoy all of the rights and privileges and be subject to all the obligations of the Assignee hereunder.

Section 8. The Builder hereby:

(a) represents and warrants to the Assignee, its successors and assigns, that the Conditional Sale Agreement was duly authorized and lawfully executed and delivered by it for a valid consideration, and that assuming valid authorization, execution and delivery by the Railroad, the Conditional Sale Agreement, is, insofar as the Builder is concerned, a valid and existing agreement binding upon the Builder and the Railroad in accordance with its terms and that it is now in force without amendment thereto; and

(b) covenants and agrees that it will from time to time and at all times, at the request of the Assignee, or its successors or assigns, make, execute and deliver all such further instruments of assignment, transfer and assurance and do such further acts and things as may be necessary and appropriate in the premises to give effect to the provisions hereinabove set forth and more perfectly to confirm the rights, title and interests hereby assigned and transferred to the Assignee or intended to be so.

Section 9. The terms of this Assignment and all rights and obligations hereunder shall be governed by the laws of the State of Georgia; provided, however, that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act. The terms, rights and obligations of the parties hereunder may not be changed orally, but may be changed only by an agreement in writing signed by the party against whom enforcement of such change is sought.

Section 10. This Agreement and Assignment may be simultaneously executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same instrument, which shall be sufficiently evidenced by any such original counterpart. The Assignee agrees to deliver one of such counterparts, or a certified copy thereof, to the Railroad, which delivery shall constitute due notice of the assignment hereby made. Although this Agreement and Assignment is dated for convenience as of the date specified

in the introductory paragraph of this Agreement and Assignment, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

IN WITNESS WHEREOF: the parties hereto, each pursuant to due corporate authority, have caused these presents to be signed in their respective corporate names by duly authorized officers and their respective corporate seals to be hereunto affixed and duly attested, all as of day, month and year first above written.

GENERAL MOTORS CORPORATION
(ELECTRO-MOTIVE DIVISION)

ATTEST: W. A. Nink
ASSISTANT SECRETARY

By: J. D. Seawell
Vice President

(M)

THE GEO. D. WARTHEN BANK

ATTEST: Amos W. Bryan
Cashier

By: Richard S. Truman
Vice President

STATE OF ILLINOIS)
)
COUNTY OF COOK)

BEFORE ME, the undersigned, a Notary Public in and for the said County and State, on this date personally appeared B. B. BROWNELL, Vice President of General Motors Corporation (Electro-Motive Division), known to me to be the person and officer whose name is subscribed to the foregoing instrument, and acknowledged to me that the same was the act of the said General Motors Corporation (Electro-Motive Division), a corporation, and that he executed the same as the act and deed of such corporation for the purposes and consideration therein expressed and the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this 4 day of May, 1970.

Agnes L. Hapke
Notary Public in and for
COOK COUNTY, ILLINOIS

My Commission Expires February 10, 1974

STATE OF GEORGIA)
)
COUNTY OF WASHINGTON)

BEFORE ME, the undersigned, a Notary Public in and for said County and State, on this day personally appeared RICHARD S. IRWIN, Vice President of The Geo. D. Warthen Bank, known to me to be the person and officer whose name is subscribed to the foregoing instrument and acknowledged to me that the same was the act of the said The Geo. D. Warthen Bank, a corporation, and that he executed the same as the act and deed of such corporation for the purposes and consideration therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this 7 day of May, 1970.

Andrea J. Wiggins
Notary Public in and for
WASHINGTON COUNTY, GEORGIA

My Commission Expires February 18, 1974